



DECISION COVER SHEET

☒ ACTION BY: Public Members Only

☐ ACTION BY: All Members

To : BOARD MEMBERS

Date: July 6, 2017

From : ADMINISTRATIVE LAW JUDGE: Diana Woodward Hagle

CASE: CALIFORNIA NEW CAR DEALERS ASSOCIATION v. JAGUAR LAND ROVER
NORTH AMERICA, LLC
Protest No. PR-2463-16

TYPE: Vehicle Code section 3085 Export Prohibition Policy
Proposed Decision Following Remand

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: February 9, 2016
- MOTIONS FILED: Respondent's Motion Objecting to Expert Witness Report and Deposition Testimony of Alan J. Skobin (denied)
- HEARING: January 9-10, 2017
- MAY 18, 2017, SPECIAL BOARD MEETING: The Public Members rejected the proposed decision with the exception of the analysis and conclusions of law regarding Vehicle Code section 11713.3(y)(2) and remanded the matter.
- COUNSEL FOR PROTESTANT: Arent Fox LLP
Halbert B. Rasmussen, Esquire
Franjo M. Dolenac, Esquire
- COUNSEL FOR RESPONDENT: Hogan Lovells US LLP
Colm A. Moran, Esquire

EFFECT OF PROPOSED DECISION:

The Proposed Decision Following Remand sustains the portion of the protest regarding Vehicle Code¹ section 11713.3(y)(1), overrules the portion of the protest regarding Section 11713.3(y)(2), and sustains the portion of the protest regarding Section 11713.3(y)(3).

SUMMARY OF PROPOSED DECISION FOLLOWING REMAND:

- The matter was remanded for additional consideration by the Administrative Law Judge limited to a determination in accordance with subdivision (c) of Section 3085 as to whether

¹ All statutory references are to the Vehicle Code.

the California New Car Dealers Association has met its burden of proof to show that the due diligence standard in Jaguar Land Rover North America's ("JLRNA") export prohibition policy violates the prohibitions of subdivision (y)(1) of Section 11713.3.

- The Proposed Decision Following Remand addresses the arguments raised by the parties, as follows:
 - JLRNA's export policy must include language reflecting the statutory "knew or reasonably should have known" standard to be met before any action adverse to a dealer may be undertaken.
 - Just because the legislature did not mandate the inclusion of the "knowledge" language in the statute does not mean that JLRNA is free to dispense with it.
 - Since JLRNA is revising its export policy anyway pursuant to the Board's Decision, the burden of including the "knowledge" language is miniscule.
 - Requiring "due diligence" by dealers when "red flags" indicate a possible export violation does not violate section 11713.3(y)(1). However, as used in JLRNA's export policy, "due diligence" is misleading.
 - Other legal principles support the conclusion that CNCDA has sustained its burden of proof in regard to subdivision (y)(1) of section 11713.3.

RELATED MATTERS:

- Related Case Law: Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142; Frantz v. Blackwell (1987) 189 Cal.App.3d 91; Ross v. Forest Lawn Memorial Park (1984) 153 Cal.App.3d 988; and San Benito Foods v. Veneman (1996) 50 Cal.App.4th 1889.
- Applicable Statutes and Regulations: Vehicle Code sections 3050, 3060, 3065, 3065.1, 3085 et seq., and 11713.3; Civil Code sections 51 and 1654.